

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DARYISE L. EARL,

Plaintiff,

-vs-

Case No. 15-CV-282

BRIAN FOSTER, et al.,

Defendants.

DECISION AND ORDER

The plaintiff, a Wisconsin state prisoner, filed a *pro se* complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. On May 7, 2015, the Court screened the complaint and dismissed the plaintiff's claims of class-of-one discrimination and deliberate indifference to a hazardous condition of confinement. (ECF No. 7.) On May 18, 2015, the plaintiff filed a motion for reconsideration of the Court's screening order (ECF No. 8), which the Court denied on May 21, 2015 (ECF No. 9). The defendants have not yet responded to plaintiff's complaint.

This matter is now before the Court on the plaintiff's motion seeking permission to amend his complaint. The plaintiff's motion is denied.

The plaintiff has not complied with Civil Local Rule 15(b), which requires that a motion to amend a pleading be filed with the proposed

amended pleading as an attachment. Without the proposed amended complaint, the Court will not grant the plaintiff's motion.

That said, the Court reminds the plaintiff that Federal Rule of Civil Procedure 15(a)(1)(B) states that, "A party may amend its pleading once as a matter of course within . . . 21 days after service of a responsive pleading." Given that the defendants have not yet filed a responsive pleading, the plaintiff does not need to seek the Court's permission before filing an amended complaint; he may do so one time as a matter of course.

If the plaintiff chooses to file an amended complaint, he must put the docket number assigned to this case on the amended complaint and must call it in the title, "Amended Complaint." The amended complaint will replace the prior complaint, and must be complete in itself, without referring back to the original complaint. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056-57 (7th Cir. 1998). In *Duda*, the appellate court emphasized that in such instances, the "prior pleading is in effect withdrawn as to all matters not restated in the amended pleading[.]" *Id.* at 1057 (citation omitted). If the plaintiff files an amended complaint, the Court will screen it pursuant to 28 U.S.C. § 1915A.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS
HEREBY ORDERED THAT** the plaintiff's motion for permission to
amend his complaint (ECF No. 12) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 9th day of June, 2015.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge